

FILED
5306 AUG -1 2008
CLERK OF COURT
FEDERAL DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Mouzon Alfonso
(Last) (First) (Initial)

Prisoner Number #CO-000473-9

Institutional Address COALINGA STATE HOSPITAL

P.O. Box 5003 Unit #7, Coalinga, CA 93210-5003

(PR)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Alfonso Mouzon

(Enter the full name of plaintiff in this action.)

vs.

Pam Ahlin, Exec. Dir. (Acting)

(Enter the full name of respondent(s) or jailor in this action)

CV

Case No.

(To be provided by the clerk of court)

08 3678

**PETITION FOR A WRIT
OF HABEAS CORPUS**

MMC

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda

County Superior Court, Oakland): 1225 Fallon Street
Alameda County Superior Court Oakland, CA 94612

Court	Location
-------	----------

(b) Case number, if known 98452

Sentenced to

(c) Date and terms of sentence January 17, 1990; 32 years

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No

Where?

Name of Institution: COALINGA STATE HOSPITAL

24511 West Jayne Ave, P.O. Box 5003 U-12,
 Address: Coalinga, CA 93210-5003

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

1 Count of Penal Code §207; 2 Counts of 288A; 2 Counts of
§289; and 1 Count of §261 (Attempted Rape)

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? Yes ☒ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐

(b) Preliminary hearing Yes ☒ No ☐

(c) Time of plea Yes ☒ No ☐

(d) Trial Yes ☒ No ☐

(e) Sentencing Yes ☒ No ☐

(f) Appeal Yes ☒ No ☐

(g) Other post-conviction proceeding Yes ☒ No ☐

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: Unknown Result: Appeal Denied

Supreme Court of California Yes ☒ No ☐

Year: Unknown Result: Appeal Denied

Any other court Yes ☐ No ☒

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes **X** No

2 (c) Was there an opinion? Yes **X** No

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes No **X**

5 If you did, give the name of the court and the result:

6 Not Applicable

7
8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes **X** No

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: Alameda County Superior Court

19 Type of Proceeding: Motion for Post-Conviction DNA Testing

20 Grounds raised (Be brief but specific):

21 Petitioner has been unlawfully denied DNA testing
22 a. under Cal. Penal Code §1405, as a result of
23 impression, the DNA should have been ordered.

24 b.

25 c.

26 d.

27 Result: Motion Denied Date of Result: March 5, 2003

28 II. Name of Court: California Court of Appeals

Type of Proceeding: Petition for Writ of Mandate

Grounds raised (Be brief but specific):

- 1 a. Denial of Post-Conviction DNA Testing
- 2 b. _____
- 3 c. _____
- 4 d. _____

5 Result: Petition Denied Date of Result: April 10, 2003

6 III. Name of Court: California Court of Appeals

7 Type of Proceeding: Writ of Habeas Corpus

8 Grounds raised (Be brief but specific):
 9 Petitioner has been unlawfully denied DNA testing under
 10 a. Cal. Penal Code §1405, as a result of first impression
 11 the DNA testing should have been ordered.

12 b. _____

13 c. _____

14 d. _____

15 Result: Writ Denied Date of Result: July 11, 2007

16 IV. Name of Court: Supreme Court of California

17 Type of Proceeding: Writ of Habeas Corpus

18 Grounds raised (Be brief but specific):

19 a. Same as issue for Court of Appeals above

20 b. _____

21 c. _____

22 d. _____

23 Result: Writ Denied Date of Result: December 12, 2007

24 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

25 Yes _____ No X

26 Name and location of court: _____

27 B. GROUNDS FOR RELIEF

28 State briefly every reason that you believe you are being confined unlawfully. Give facts to
 support each claim. For example, what legal right or privilege were you denied? What happened?

Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

need more space. Answer the same questions for each claim.

[Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

Claim One: Petitioner has been unlawfully denied D.N.A. testing under Cal. Penal Code §1405, as a result of first impression, the DNA testing should have been ordered.

Supporting Facts: See attached Sheet of Paper on next page.

Claim Two:

Supporting Facts:

Claim Three:

Supporting Facts:

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

Not Applicable

ATTACHED SHEET

Petitioner, Alfonso Mouzon, seeks appointment of counsel for the purpose of obtaining DNA testing pertinent to his 1989 conviction for rape (California Penal Code § 289) in Alameda Superior Court Case No. 98452. Petitioner brings this petition specifically under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, as he was denied DNA testing under California Penal Code § 1405(b)(3)(B). Petitioner is attacking his current confinement through his prior conviction.

Petitioner is currently awaiting adjudication for a civil mental health commitment pursuant to California Welfare and Institutions Code § 6600 et seq. On January 17, 1990, petitioner was sentenced on the above referenced criminal case to 32 years in State prison for convictions of Penal Code §§ 261, 270, 288a, and two counts of 289. At the trial, the identity of this petitioner as the person who sexually assaulted the victim **WAS NOT** corroborated in any way; neither by the forensic or scientific evidence. Petitioner maintains that he was not the person who sexually assaulted the victim, and if the Court were to order DNA testing, the results would exonerate this petitioner as the perpetrator in that case.

Additionally, DNA testing would raise the reasonable probability that the verdict would have been **MORE FAVORABLE** to petitioner had such testing been available in 1989. Further, such testing would corroborate petitioner's claim that he did not sexually assault the victim. The absence of any of petitioner's bodily fluids swabbed from the victim's mouth, and later retrieved from the victim's vaginal cavity and mouth area during a sexual assault examination, would seriously undermine not only the victim's testimony that petitioner ejaculated in her mouth, on her face, and that he attempted vaginal intercourse with her, but also would completely invalidate the criminal conviction against petitioner.

A reasonable person would be led to believe that if the victim was sexually assaulted by petitioner, his DNA would be left at the scene and on the victim, and sufficient testing would prove as much. The testing in this case would prove that petitioner **DID NOT** commit the crime for which he was charged and later convicted.

The biological samples obtained from the victim were never subjected to DNA testing. The samples obtained from the victim were simply admitted into evidence at the criminal trial.

On or about January 17, 2003, petitioner filed a motion in the State Superior Court for Post-Conviction DNA Testing. On March 5, 2003, the court denied the motion without appointing counsel. Petitioner timely filed a petition for writ of mandate in the California Court of Appeal, First Appellate District (Case No. A101979), which was denied on April 10, 2003. Thereafter, on September 26, 2006, petitioner brought a motion for post-conviction DNA testing, which motion was filed by the Public Defender's Office (who currently represents petitioner in the civil commitment proceeding). That motion was denied as well. The court found that the identity was not sufficient at trial; however, petitioner maintains that based on the lack of DNA testing and uncorroborated testimony, the identity of petitioner as being the perpetrator is questionable at best.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 U.S. Constitution 5th Amendment, 6th Amendment, 14th Amendment;
5 18 U.S.C.A. 3600; In re Kinnamon, 133 Cal.App.4th 316, 34 Cal.
6 Rptr.3d 802

7 Do you have an attorney for this petition? Yes _____ No **X**

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on 7-30-08
14 Date

Alfonso Morejon
Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Mouzon Alfonso
(Last) (First) (Initial)

Prisoner Number #CO-000473-9

Institutional Address COALINGA STATE HOSPITAL

P.O. Box 5003 Unit #7, Coalinga, CA 93210-5003

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Alfonso Mouzon)
(Enter the full name of plaintiff in this action.))

vs.)

Pam Ahlin, Exec. Dir. (Acting))

_____)

_____)

(Enter the full name of respondent(s) or jailor in this action))

_____)

Case No. _____
(To be provided by the clerk of court)

**PETITION FOR A WRIT
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When and Where to File

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If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
7 but may be subject to such custody in the future (e.g., detainers), you must name the person in whose
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda

13 County Superior Court, Oakland): 1225 Fallon Street
14 Alameda County Superior Court Oakland, CA 94612

15 Court Location

16 (b) Case number, if known 98452 Sentenced to

17 (c) Date and terms of sentence January 17, 1990; 32 years

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes X No

20 Where?

21 Name of Institution: COALINGA STATE HOSPITAL
22 24511 West Jayne Ave, P.O. Box 5003 U-12,
Address: Coalinga, CA 93210-5003

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 1 Count of Penal Code §207; 2 Counts of 288A; 2 Counts of
27 §289; and 1 Count of §261 (Attempted Rape)

3. Did you have any of the following?

Arraignment: Yes **X** No

Preliminary Hearing: Yes **X** No

Motion to Suppress: Yes _____ No **X**

4. How did you plead?

Guilty _____ Not Guilty **X** Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury **X** Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes **X** No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes **X** No

(b) Preliminary hearing Yes **X** No

(c) Time of plea Yes X No

(d) Trial Yes **X** No

(e) Sentencing Yes **X** No _____

(f) Appeal Yes **X** No

(g) Other post-conviction proceeding Yes X No

8. Did you appeal your conviction? Yes **X** No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes **X** No

Year: Unknown Result: Appeal Denied

Supreme Court of California Yes **X** No

Year: Unknown Result: Appeal Denied

Any other court Yes _____ No **X**

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

1 a. Denial of Post-Conviction DNA Testing

2 b. _____

3 c. _____

4 d. _____

5 Result: Petition Denied Date of Result: April 10, 2003

6 III. Name of Court: California Court of Appeals

7 Type of Proceeding: Writ of Habeas Corpus

8 Grounds raised (Be brief but specific):

9 Petitioner has been unlawfully denied DNA testing under
10 a. Cal. Penal Code §1405, as a result of first impression
11 the DNA testing should have been ordered.

12 b. _____

13 c. _____

14 d. _____

15 Result: Writ Denied Date of Result: July 11, 2007

16 IV. Name of Court: Supreme Court of California

17 Type of Proceeding: Writ of Habeas Corpus

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19 a. Same as issue for Court of Appeals above

20 b. _____

21 c. _____

22 d. _____

23 Result: Writ Denied Date of Result: December 12, 2007

24 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

25 Yes _____ No X

26 Name and location of court: _____

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28 State briefly every reason that you believe you are being confined unlawfully. Give facts to

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Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Petitioner has been unlawfully denied D.N.A. testing
6 under Cal. Penal Code §1405, as a result of first impression,
the DNA testing should have been ordered.

7 Supporting Facts: See attached Sheet of Paper on next page.

8 _____
9 _____
10 _____

11 Claim Two: _____

12 _____

13 Supporting Facts: _____

14 _____

15 _____

16 _____

17 Claim Three: _____

18 _____

19 Supporting Facts: _____

20 _____

21 _____

22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 Not Applicable

26 _____

27 _____

28 _____

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18 U.S.C.A. 3600; In re Kinnamon, 133 Cal.App.4th 316, 34 Cal.
Rptr.3d 802

Do you have an attorney for this petition? Yes _____ No X

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 7-30-08

Date

Alfonso Moreno

Signature of Petitioner

(Rev. 6/02)

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Coalinga State Hospital

Alfonso Mouzon CO# 000473-9

Cash Value: \$5.75

Redeem \$3.60

Cash Value: \$2.15

7/23/2008 3:13:51 PM

↔V☺

Attn: Court Clerk,

I'm requesting a
returned ~~filed~~ copy as
soon as possible please.

Thankyou,
A. Morejon.

APPEAL, CLOSED, E-Filing, HABEAS, ProSe

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:07-cv-04070-MMC
Internal Use Only**

Mouzon v. McLain
Assigned to: Hon. Maxine M. Chesney
Case in other court: **08-15021**
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 08/08/2007
Date Terminated: 11/29/2007
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Petitioner**Alfonso Mouzon**

represented by **Alfonso Mouzon**
Coalinga State Hospital
CO # 000473-9
P.O. Box 5003
Coalinga, CA 93210
PRO SE

V.

Respondent

Ben McLain
Executive Director

Date Filed	#	Docket Text
08/08/2007	<u>1</u>	PETITION for Writ of Habeas Corpus (No Process); (IFP Pending). Filed by Alfonso Mouzon. (aaa, Court Staff) (Filed on 8/8/2007) (Entered: 08/09/2007)
08/08/2007	<u>2</u>	CERTIFICATE OF SERVICE by Alfonso Mouzon re 1 Petition for Writ of Habeas Corpus (aaa, Court Staff) (Filed on 8/8/2007) (Entered: 08/09/2007)
08/08/2007	<u>3</u>	MOTION for Leave to Proceed in forma pauperis filed by Alfonso Mouzon. (aaa, Court Staff) (Filed on 8/8/2007) (Entered: 08/09/2007)
08/08/2007	<u>4</u>	Letter from Clerk requesting a signed and completed IFP application or filing fee of \$5.00. (aaa, Court Staff) (Filed on 8/8/2007) (Entered: 08/09/2007)
08/08/2007		CASE DESIGNATED for Electronic Filing. (aaa, Court Staff) (Filed on 8/8/2007) (Entered: 08/09/2007)
08/28/2007	<u>5</u>	Addendum: "Supporting Facts" re 1 Petition for Writ of Habeas Corpus filed by Alfonso Mouzon. (Related document(s) 1) (rcs, COURT STAFF) (Filed on 8/28/2007) (Entered: 09/11/2007)
11/29/2007	<u>6</u>	ORDER OF DISMISSAL; GRANTING 3 LEAVE TO PROCEED IN FORMA PAUPERIS. Signed by Judge Maxine M. Chesney on November 29, 2007. (mmcsec, COURT STAFF) (Filed on 11/29/2007) (Entered: 11/29/2007)
11/29/2007	<u>7</u>	JUDGMENT: The petition for a writ of habeas corpus is hereby DISMISSED. The dismissal is without prejudice to petitioners filing a new federal habeas petition once his state civil

		commitment proceedings are completed and he has exhausted state court remedies concerning all claims he wishes to raise in federal court. (tl, COURT STAFF) (Filed on 11/29/2007) (Entered: 11/29/2007)
12/12/2007	<u>8</u>	NOTICE OF APPEAL as to <u>7</u> Judgment, <u>6</u> Order Dismissing Case by Alfonso Mouzon. (aaa, Court Staff) (Filed on 12/12/2007) Modified on 1/10/2008 (aaa, Court Staff). USCA NUMBER: 08-15021 (Entered: 12/13/2007)
01/02/2008	<u>9</u>	ORDER DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY. Signed by Judge Maxine M. Chesney on January 2, 2008. (mmcsec, COURT STAFF) (Filed on 1/2/2008) (Entered: 01/02/2008)
01/02/2008		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>8</u> Notice of Appeal (aaa, Court Staff) (Filed on 1/2/2008) (Entered: 01/03/2008)
01/02/2008		Copy of <u>8</u> Notice of Appeal and Docket sheet mailed to all counsel (aaa, Court Staff) (Filed on 1/2/2008) (Entered: 01/03/2008)
01/02/2008		Certificate of Record Mailed to USCA re appeal <u>8</u> Notice of Appeal : (aaa, Court Staff) (Filed on 1/2/2008) (Entered: 01/03/2008)
01/02/2008		Certified and Transmitted Record on Appeal to US Court of Appeals re <u>8</u> Notice of Appeal (aaa, Court Staff) (Filed on 1/2/2008) (Entered: 01/03/2008)
01/09/2008	<u>10</u>	USCA Case Number 08-15021 : RECEIPT OF ACKNOWLEDGMENT from the Ninth Circuit Court of Appeals for <u>8</u> Notice of Appeal filed by Alfonso Mouzon. (aaa, Court Staff) (Filed on 1/9/2008) (Entered: 01/10/2008)
04/18/2008	<u>11</u>	Letter dated 3/2/08: from Alfonso Mouzon re request for copies. (aaa, Court Staff) (Filed on 4/18/2008) (Entered: 04/23/2008)

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